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FEDERAL DISASTER ASSISTANCE PROGRAMS APPLICABLE TO
ENVIRONMENTAL AND ECONOMIC PROBLEMS RESULTING
FROM OIL SPILLS AND OTHER WATER POLLUTION -- RELATED PHENOMENA

1ST OCS YEAR
(Task 8.7)

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ABSTRACT

This paper involved a brief examination of existing Federal programs designed to aid localities and small businesses which suffer significant financial losses as a result of a serious oil spill or other catastrophe. These losses generally are in the form of lost tax revenues to various levels of government, revenue losses to large companies employing many local residents, and revenue losses to small businesses which threaten to force them into bankruptcy. Alternative compensation techniques are also reviewed, including Federal and State legislation currently before Congress and the New York State Legislature, dealing with oil spill liability and compensation.

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I. BACKGROUND

Recent events involving large oil spills in waters both within and beyond twelve miles of our coast point out dangers inherent in the marine transport of oil. Although Federal legislation exists that prohibits the willfull discharge of oil and other so-called "hazardous substances" into U.S. waters, these discharges do occur, and whether they are accidental or not, the potential for environmental degradation and related economic loss is considerable.

Such losses are in the form of reduced sales and property tax revenues and cutbacks in certain community services. According to Sorenson's Economic Cost of the Santa Barbara Oil Spill (1970), the 1969 Union Oil Company platform blowout cost the State of California \$17 million in sales tax revenues; the County of Santa Barbara \$1.1 million in sales tax revenue; the City of Santa Barbara \$3 million in sales tax revenues and \$600,000 in bed tax revenues (tax revenues derived from the rental of hotel or motel accommodations to tourists or other transients). Also, the City of Carpinteria reported total tax revenue losses in excess of \$560,000.

Future outer continental shelf oil and gas drilling operations may include provisions for the transport of crude oil to mainland refineries by tanker. Oil obtained at the Georges Bank area of the North Atlantic is likely to be transported to facilities in and near the Port of New York and New Jersey through waters immediately adjacent to the south shore of Long Island. Risks to Long Island's shoreline -- related tourist and commercial fishing industries posed by this mode of transport are evident.

A large oil spill could bring about a "disaster" situation under the provisions of a number of Federal disaster assistance programs. Impacted beaches could result in serious economic loss to the tourist industry and to Long Island's regional economy. Oil-polluted waters could result in

devastating losses to the commercial fishing industry and related small businesses such as bait and tackle shops, seafood restaurants, and fish stores all over Long Island.

The present and projected marine transport of oil along the South Shore of Long Island makes the possibility of such a "disaster" very realistic indeed. This paper will briefly detail Federal Legislation dealing with the prohibition and prevention of oil spills in U.S. waters and examine existing programs designed to aid both public and private entities in the event of such a disaster.

II. STATUTES DEALING WITH OIL SPILLS AND THE DISCHARGE OF HAZARDOUS SUB- STANCES; PREVENTION AND PROHIBITION

A number of Federal and State statutes deal with the prevention, prohibition, containment, and clean-up of oil spills and hazardous substances. The Federal statutes prohibit the discharge of oil and hazardous substances from vessels and facilities, provide for routine tank cleansing operations, and require the establishment of a Federal Contingency Plan for the removal of oil and hazardous substances, as well as a Federal Contingency Fund to reimburse states for reasonable costs incurred in oil spill clean-up. New York State also provides a contingency plan for emergency operations in the event of water quality accidents.

Prevention of Discharges

Legislation designed to prohibit or prevent oil spills in U.S. waters generally falls into two categories: that designed to deal with discharge from oil carrying vessels and that designed to deal with discharges from stationary onshore or offshore facilities such as oil drilling platforms.

Section 311 of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500) prohibits the discharge of oil in harmful quantities from onshore facilities, offshore facilities, or from any vessel into or upon the waters of the United States and the contiguous zone, for a total of twelve miles from the coast. The Act also prohibits the discharge of hazardous substances designated by the Environmental Protection Agency (EPA), although the EPA has not yet promulgated regulations designating and listing substances it considers "hazardous".

Section 311 of the FWPCA calls for the establishment of procedures, methods, and equipment to prevent the discharge of oil and hazardous substances from vessels and facilities -- both onshore and off. Pursuant

to this legislative authorization, the Coast Guard promulgated regulations governing oil transfer to and from vessels in the waters of the United States and the contiguous zone, while EPA enacted regulations applying to onshore and offshore facilities not related to the transport or transfer of oil.

The Oil Pollution Act of 1961 and the Amendments of 1973 regulate bilge pumping by prohibiting the discharge of oil or oily mixture from any ship in excess of certain strict limitations on the oil content of the discharge.

These amendments also regulate the routine tank cleansing operations practiced by oil tankers, which involves the mixing of sea water and solvent in tanks in order to cleanse them of leftover crude oil. The mixture is then flushed into the sea. This operation is just one of a number of types of "chronic oil spills".

Containment and Clean-up

The Federal Water Pollution Control Act imposes responsibility on onshore and offshore operators of facilities as well as vessels to notify the United States in the event of a spill of oil or hazardous substances.

Section 311 (c) of the Act (33 USC § 1161) further requires the Federal Government to establish a plan¹ for the removal of oil and hazardous substances. "...Such plan shall provide for efficient, coordinated, and effective action to minimize damage from oil discharges, including containment, dispersal, and removal of oil..."²

Provisions within the Federal Contingency Plan include:

- (a) A requirement that a determination be made at the scene of the spill concerning the proper actions of the party responsible for the discharge;

¹National Oil and Hazardous Substances Pollution Contingency Plan.

²FWPCA, § 311 (c) (2).

- (b) the authority of the Federal Government to remove and, if necessary, destroy vessels causing pollution problems; and
- (c) the right of the United States Attorney to seek relief through the courts to abate oil spills.

Under the plan, the EPA has the responsibility for clean-up activities over spills in inland waters, while the same responsibility for coastal waters is delegated to the Coast Guard.

The plan also provides a system to reimburse states for reasonable costs incurred in the removal of oil spills through a \$35 million revolving fund. Unfortunately, because no list defining hazardous substances has been developed by the EPA, this fund can only be used for oil spills. This limitation became evident during the summer of 1976 when floating debris and waste materials in the waters off of Long Island forced the temporary closing³ of over one hundred beaches.

The Federal Contingency Plan is designed to promote the coordination and direction of Federal and State response systems. New York State has a contingency plan⁴ for water quality accidents, coordinated through the Department of Environmental Conservation. The plan outlines the jurisdictions and responsibilities of State, Federal and local agencies in responding to water quality accidents. The plan also provides response guidelines, technical references and up-to-date directories of agencies and personnel with special interests and capabilities to supplement the Departments response.

Although the costs of cleaning beaches and coastal waters after an oil spill are high, Federal Programs such as the aforementioned contingency plan

³Following the pollution of Long Island waters, Rep. Thomas Downey (D-West Islip) initiated attempts to amend the FWPCA to allow Federal aid for the clean-up of waste type pollution.

⁴New York State Water Quality Accident Contingency Plan.

and revolving fund exist and are available for just such a purpose.

The Deep Water Port Act of 1974 (PL 93-627) mandates that owners and operators of vessels responsible for oil discharges be liable for clean-up costs and damages in amounts up to \$20,000,000. In addition to this, agreements between tanker owners concerning liability for oil pollution (i.e., TOVALOP and CRISTAL⁵) provide for compensation to the Federal Government for clean-up costs and pollution damages resulting from vessel discharges in coastal or inland waters.

While these programs are designed to define spill responsibility and clean-up obligations to the Federal Government, there also exist a number of programs aimed at assisting local governments and small businesses which suffer significant economic loss due to oil spills or other catastrophes. These assistance programs take effect after a spill or other disaster occurs. Some of the better known programs are identified and explained in the following section.

⁵Tank Owner Voluntary Agreement Concerning Liability for Oil Pollution and Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution, respectively.

III. FEDERAL DISASTER ASSISTANCE PROGRAMS

Federal disaster assistance is normally intended to supplement, but not be a substitute for, that afforded by the states and their political subdivisions and by private relief organizations.

When a governor believes that Federal assistance is necessary to supplement the efforts and available resources of the state and local governments, he may require that the President declare a major disaster or make an emergency determination in order to implement the provisions of the Disaster Relief Act of 1974 (PL 93-288).⁶ Under the provisions of the Act, (also: 42 USC § 1855 (a)), a "major disaster" is defined as:

"...any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe in any part of the U.S. which, by the determination of the President, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and available resources of state and local governments in alleviating the damage, hardship, or suffering caused thereby..."

The Federal Disaster Assistance Administration has been delegated the responsibility for providing Federal disaster assistance under the provisions of the Disaster Relief Act of 1974. It is directed to coordinate the activities of Federal agencies in providing disaster assistance and to direct any Federal agency to utilize available personnel, supplies, facilities, and other resources in providing such assistance as the result of a major disaster or emergency situation.

⁶ Executive Order 11795 reserves to the President the authority to declare a major disaster or emergency, and delegate major responsibilities under the Act to the Secretary of Housing and Urban Development. Many of these responsibilities are further delegated to the regional directors of the Federal Disaster Assistance Administration (FDAA).

Some disaster assistance programs can be provided without a major disaster declaration, but often these are inadequate to meet public and private needs. An example of this is the case of the waste pollution problem faced by Long Island during the summer of 1976. Although Governor Carey asked for a Presidential disaster declaration in late June, President Ford declined to provide one and, instead, called in Federal Job Corps personnel to clean the sludge and other waste materials from the beach areas.

Regional FDAA Administrators may make a community disaster loan to any local government which suffers a substantial loss of tax and other revenues as the result of a major disaster. A serious oil spill could fit into the category of "other catastrophe" in the official definition of what constitutes a major disaster. Such a spill could easily impact Long Island's beaches and reap havoc on seasonal tourist and recreational spending.

A community disaster loan may be approved in either the same fiscal year in which the disaster occurred or in the following fiscal year. This loan is to be used to carry on existing local governmental functions to meet disaster-related needs.

It is foreseeable that the economic stability of certain jurisdictions along Long Island's ocean shore could be threatened by a summer oil spill which closes down area beaches for any significant period of time. Villages such as East Hampton and Montauk, which are very dependant upon summer tourist and recreation spending, could find themselves forced to apply for aid under this program.

Another Federal assistance program requiring a Presidential declaration of disaster is the Small Business Act (P.L. 85-536/15 USC § 636) and its recent amendments.

The Small Business Administration (SBA) was created to carry out the policies set forth in the Small Business Act. Under the provisions of the

Act, the SBA is empowered: "1) to make low interest loans, either directly or in cooperation with banks or other lending institutions, as the SBA may determine to be necessary or appropriate because of floods, riots, or civil disorders, or other catastrophes; and 2) to make such loans...as it determines necessary or appropriate to any small business concern located in an area affected by a disaster, if the SBA determines that the concern has suffered a substantial economic injury as a result of such disaster, and if such disaster constitutes a major disaster as determined by the President under Title 42, Section 1855 of the U.S. Code Annotated..."

For the purpose of the Act, a small business concern is deemed to be one which is independently owned and operated, and which is not dominant in its field of operation. Primary criteria for determination are the number of employees and the dollar volume of business.

In the case of property loss or damage or injury resulting from a major disaster, the SBA, to the extent that such injury, loss, or damage is not compensated for by insurance or otherwise, may grant a loan to small businesses to provide them with working capital, the payment of operating expenses, or for any purpose for which loans may be made under provisions of the Act. These loans are to cover any damages not compensated for by insurance or otherwise, and at no time are to be at an annual interest rate of over 6 percent.

These two acts, the Disaster Relief Act of 1974 and the Small Business Act, both being primarily of a supplementary nature, provide relief to the public and private sectors in the wake of natural disasters and other catastrophies. Clearly, a major oil spill in waters adjacent to beaches and commercial fishing grounds could qualify as a "disaster" or a "catastrophe" under the provisions of the Acts.

The Santa Barbara oil spill of 1969, the St. Lawrence River Oil Spill of 1976, and, potentially, the Argo Merchant spill of 1976, serve to illustrate the kinds of losses -- both economic and environmental -- which can be expected to occur. Businesses relying on shoreline-related tourism and recreation could be nearly wiped out in the event of a major spill during the summer months. Such was almost the case in numerous instances during the waste pollution situation faced by Long Island in June and July of 1976.

Local, county, and state governments all lose income when retail sales and property values decline as a result of an oil spill or other disaster. The Disaster Relief Act was designed to help localities. Both the Small Business Act and the Disaster Relief Act are among the most direct -- and important -- forms of Federal disaster assistance.

In addition to the funds available through the Disaster Relief Act and the Small Business Act, Section 308 of the Coastal Zone Management Act Amendments of 1976 -- the Coastal Energy Impact Program -- provides certain types of financial assistance to states affected by both coastal energy activity and Outer Continental Shelf energy activity. Assistance is in the form of grants to coastal states to help states and local governments design and implement projects to prevent, reduce or ameliorate unavoidable environmental and recreational losses in the coastal zone resulting from coastal energy activity, regardless of when the loss occurred, and to ensure that the person responsible for these environmental or recreational losses pays for their full cost. Grant funds are available only to the extent that there is no feasible way to recover the cost of prevention, reduction, or amelioration from an identifiable person causing the loss or from another Federal program.

IV. ALTERNATIVE COMPENSATION TECHNIQUES

Current Federal and State Legislation

The following synopsis provides a brief review of Federal and State legislation dealing with oil spill liability and compensation. Each legislative bill provides for a comprehensive system of liability and compensation for clean-up and removal costs and for economic and environmental losses resulting from oil spill pollution. The status of each bill as of June 16, 1977 is also provided.

Discussion with State and Federal officials, including representatives from the Department of Environmental Conservation, Department of Transportation, Office of Parks and Recreation, United States Coast Guard, Army Corps of Engineers and Environmental Protection Agency, indicates that passage of a liability and compensation bill will not provide immediate implementation. A substantial time lapse will occur before implementation in order to develop regulations and procedures and to identify necessary materials, equipment and personnel. The Revolving Fund provided through the Federal Contingency Plan represents the most suitable means of providing relief during this lapse period. These funds may be augmented in the near future at a higher level.

Federal Legislation Currently Before Congress:

S. 9

January 10, 1977

Sponsors: Senator Jackson (for himself and Senator Metcalf)

"A bill to establish a policy for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Land Act; and for other purposes."

Provides for an Offshore Oil Spill Pollution Fund established within the Department of Transportation. The revolving account would be not less than \$100,000,000 and not more than \$200,000,000.

Bill Status: In committee (Senate Energy and Natural Resource Committee)

S. 1187

The Comprehensive Oil Pollution Liability and Compensation Act of 1977
March 30, 1977

Sponsor: Senator Warren G. Magnuson
Carter Administration Oil Spill Bill

Provides for a compensation fund of \$200,000,000 and establishes strict liability for owners and operators of discharge sources.

*Preempts all other liability and compensation laws, both Federal and State.

Bill Status: In committee (Senate Committees on Commerce and Environmental and Public Works)

H. R. 6803

May 16, 1977

Sponsors: Congressmen Biaggi (for himself, Mr. Murphy of New York, Mr. Ruppe, Mr. Treen, Mr. Ginn, Mr. Studds, Mr. Snyder, Mr. DeLugo, Mr. Hubbard, Mr. Pritchard, Mr. Bonker, Mr. D'Amours, Mr. Lent, Mr. Patterson of California, Mr. Hughes, Mr. Evans of Delaware, Ms. Mikulski, Mr. Akaka, Mr. Leggett, Mr. Bowen, Mr. Zeferetti, Mr. Oberstar, Mr. Forsythe, and Mr. Bonior)

"An act to provide a comprehensive system of liability and compensation for oilspill damage and removal costs, and for other purposes."

Provides for a nonlapsing, revolving fund of \$200,000,000.

Bill Status: Reported out of the Committees on Merchant Marine and Public Works.

New York State Legislation Currently Before the Legislature:

S. 2562

February 9, 1977

Sponsor: Senator John Marchi

"An act to repeal and reenact article thirty-seven of the environmental conservation law, relating to providing for prohibition of, cleanup of and

a compensation fund for damage caused by discharge of petroleum and other hazardous substances."

Provides for a nonlapsing, revolving fund of \$25,000,000.

Bill Status: Referred to the Committee on Conservation and Recreation on February 9, 1977.

S. 2652 A. 3532

February 9, 1977

Sponsors: Senators B. C. Smith, Dunne, Johnson, LaValle, Pisani and Trunzo, Assemblymen Bianchi, Burns, Cochrane, Conners, Flanagan, Grannis, Harenberg, Hinckey, Hochbrueckner, Hoyt, Kidder, Koppell, Kremer, Landes, McGee, Orazio, Wertz and Yevoli

"An act to amend the environmental conservation law, in relation to prohibiting the discharge of petroleum and other hazardous substances, providing for the clean-up and removal of any such discharge, establishing a spill compensation fund, providing for the raising of revenues therefore, in order to protect the economy and environment of this state."

Provides for a nonlapsing, revolving fund of not less than \$25,000,000.

Bill Status: Third reading.

S. 3030C

February 16, 1977

Sponsors: Senators Caemmerer, B. C. Smith, Conklin, Dunne, Gazzara, Goodman, Griffin, Johnson, LaValle, Marino, Pisani, Trunzo and Winikow

"An act to amend the navigation law, the highway law, and the state finance law in relation to prohibiting the discharge of petroleum, providing for the cleanup and removal of any such discharge, establishing an environmental protection and spill compensation fund, providing for the raising of revenues therefor, in order to protect the environment and economy of this state."

Provides for a nonlapsing, revolving compensation fund of \$5,000,000.

Bill Status: Third reading.

Synopsis of Oil Pollution Liability and Compensation References

The following synopsis provides a brief review of specific documents which deal with legislative studies on oil pollution control and liability, assessment of oil spill impacts, and private actions for damages resulting from offshore oil pollution.

1. Report: Oil Pollution Liability
House of Representatives
94th Congress, 2nd Session
Rept. 94-1489, Part 1
September 9, 1976

Provides a detailed analysis of H. R. 14862, federal legislation of 1976 which proposed the establishment of a comprehensive system of liability and compensation for damages caused by oil pollution. This law would have created a compensation fund of \$200,000,000 and established strict liability for owners and operators of discharge sources. Past legislation on oil pollution control and liability was discussed and a section-by-section analysis of the act was provided.

2. Assessing the Social Impacts of Oil Spills
Article: Compensation for Oil Pollution Damages, Thomas R. Lundquist
Background Papers and Conference Proceedings of an Invitational Symposium
Sponsored by: U.S. Environmental Protection Agency and The Institute of
Man and Science
September 25-28, 1973

Examines legislation applicable to oil pollution and oil spill liability and compensation. Various theories of liability are reviewed, including tort liability, negligence, nuisance and trespass. Specific case laws are documented. International liability programs and policies aimed at oil pollution control are also discussed.

3. Private Actions for Damages Resulting from Offshore Oil Pollution
Michael M. Gordon
Columbia Journal of Environmental Law
School of Law, Columbia University
Volume 2, Number 1, pages 140-192
Fall, 1975

Review of various private liability actions for damages resulting from oil pollution. Admiralty jurisdiction and maritime torts are studied in detail, as well as locality tests and traditional maritime activity applicable to liability actions. Various theories of liability are examined, including negligence, nuisance, trespass, unseaworthiness and strict liability. The pros and cons of each approach are discussed along with obstacles confronting the claimant should he choose that approach. Specific case laws are documented for each liability theory. Rules for compensation for damages and costs of abatement are summarized. Recent statutory developments in the states of New Jersey, Alaska, Florida and Maine are discussed, as well as international liability provisions for oil spill pollution damage caused by oil transport vessels.

4. Memorandum from Mr. Marc Guerin of the Department of Environmental Protection of Maine
Subject: Oil Spill Legislation N.Y.L.D. - 7989
October 13, 1976

Provides suggestions and comments by Mr. Guerin to Senator John D. Caemmerer of New York State, dealing with proposed oil spill legislation, L.D. 7989 in New York. Oil spill liability and compensation policies in Maine were discussed.

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